

## REMARKS

In the Office Action mailed by the United States Patent and Trademark Office on November 7, 2008, claims 1-16, 18-25 and 27-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over United States patent publication no. 2005/0075925 ("Sash") in view of United States patent publication no. 2002/0129121 ("Reber").

### Claim Rejections Under 35 U.S.C. § 103:

M.P.E.P. § 2141 sets forth the *Graham* factual inquiries that should be considered when making an obviousness rejection under Section 103: 1) ascertaining the scope and content of the prior art; 2) ascertaining the differences between the claimed invention and the prior art; and 3) resolving the level of ordinary skill in the pertinent art. (Citing *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966).) In addition, M.P.E.P. §§ 2141 and 2142 set forth that "the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." (Citing *KSR International Co. v. Teleflex Inc.* (*KSR*), 550 U.S. \_\_\_, 82 USPQ2d 1385 (2007).)

The M.P.E.P. provides several examples of rationales that can support a rejection under 35 U.S.C. § 103, namely:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) "Obvious to try" - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art;
- (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

(M.P.E.P. §§ 2141 & 2143, emphasis added.) As may be seen from the emphasized portions of the above potential rationales, each rationale is dependent on showing known elements from the prior art corresponding to the limitations of the claimed invention. Each rationale therefore depends on: 1) satisfying the *Graham* inquiry, showing that the scope and content of the prior art included each limitation contained in the claimed invention, and 2) satisfactorily showing that one of ordinary skill in the art would take the art teachings to overcome the identified differences under *Graham* between the claimed invention and the individual teachings of the prior art.

Applicant respectfully submits that Sash and Reber, either alone or in combination, do satisfy the *Graham* inquiry because Sash in view of Reber fails to teach or suggest all the limitations contained in the claimed invention. Independent claim 1 of the present invention recites a method of unilevel marketing and distribution, the method comprising the steps of: preparing tangible promotional materials at a distributor for mass distribution; using a computer to receive a reference for a specific potential customer from a sales representative, the reference being initiated by said sales representative who is known personally by said potential customer and received by the distributor, wherein said reference includes a message that is personalized specifically to the potential customer from said sales representative; personalizing the previously prepared tangible promotional materials for distribution to said potential customer, wherein personalizing the tangible promotional materials comprises the step of modifying the previously prepared tangible promotional materials to include said personalized message and means for identifying said sales representative; distributing said tangible promotional materials directly to said potential customers from a the distributor; using a computer to: receive a purchase order from said potential customer, wherein said order is received by said distributor and identifies said sales representative; receive payment for said order; and distribute a portion of said received payment as a commission to said sales representative.

Sash in view of Reber fails to teach or suggest each of the limitations found in the presently presented claim set. In particular, Sash in view of Reber fails to teach or fairly suggest preparing, then personalizing tangible promotional materials for mass distribution and distributing the personalized tangible materials directly from the distributor to a potential

customer who is personally known by the sales representative. Rather, Sash discloses an internet-based address book that enables individual sales representatives to send a personalized message to potential customers from a list, and Reber teaches an associate referral program which allows an associate to receive compensation for a sale of an item made via a computer network.

Sash fails to teach or fairly suggest preparing then personalizing tangible promotional materials for mass distribution, distributing the personalized materials directly from the distributor (not the sales representative) to a potential customer who is personally known by the sales representative. Figure 27c and paragraphs 129-131 of Sash indicate that a sales representative may prepare a personalized message, which may be posted on addresshawk.com or to be sent to a potential customer. Paragraphs 129-131 fail to disclose the initial preparation of materials for mass distribution, the subsequent personalization at the distributor of the materials, which are then sent to individuals personally know by the sales representative.


Reber fails to teach or fairly suggest preparing then personalizing tangible promotional materials for mass distribution, distributing the personalized materials directly from the distributor (not the sales representative) to a potential customer who is personally known by the sales representative. Paragraphs 27-32 of Reber provide for a method in which a customer scans a bar code in a catalog for an item the customer wants to purchase effectively navigating the customer to a site where the item is offered for sale. The method comprises determining the associate identified by the bar code and compensating the associate based on the sale. As such, Sash in view of Reber fails to render obvious the claims of the present invention and Applicant respectfully requests that the rejections under § 103 be withdrawn at this time.

### CONCLUSION

Applicants submit that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicants request favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, the Examiner is invited to call the undersigned.

DATED this 3 day of March, 2009.

Respectfully submitted,



Michael F. Krieger  
Attorney for Applicant  
Registration No. 35,232

KIRTON & McCONKIE  
1800 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 321-4814  
Facsimile: (801) 321-4893

JRM/brc  
1105945